

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: Mark Kutney, AICP, Development Services Director/(954) 797-1101
Prepared by: Annie Feng, Planner II

SUBJECT: Quasi Judicial Hearing: Variance
V 5-1-04, 2399 S. University Drive, generally located at the northwest corner of
Nova Drive and University Drive

AFFECTED DISTRICT: District 2

TITLE OF AGENDA ITEM: V 5-1-04, Mobil Oil Corporation

The petitioner requests five (5) variances:

1. **FROM:** Section 12-34 (Y)(2) of the Town of Davie Land Development Code which requires a minimum distance of 250 feet, shortest airline measurement, between the nearest points on any **lot** to be occupied for fuel pump islands and/or service station purposes and any **lot** which is zoned, or land use plan designated residential; **TO:** reduce the distance from the proposed gas station **lot line** to a residential property **lot line** to 25 feet;
2. **FROM:** Section 12-34 (Y)(2) of the Town of Davie Land Development Code which requires a minimum distance of 250 feet between a **lot** to be occupied by fuel pump islands and any **lot** occupied for service station purpose; **TO:** reduce the distance to another gas station to approximately 200 feet;
3. **FROM:** Section 12-34 (Y)(1) of the Town of Davie Land Development Code which requires a minimum lot area of 43,450 square feet for a lot to be occupied by fuel pump islands, **TO:** reduce the lot area to 40,057 square feet;
4. **FROM:** Section 12-33 (A)(4) of the Town of Davie Land Development Code which requires that in all districts an accessory building or structure shall not be of greater height than a principal building on the plot; **TO:** allow the fuel pump canopy higher than the mean roof height of the convenience store;
5. **FROM:** Section 12-107 (D)(4) of the Town of Davie Land Development Code which requires a minimum of ten-foot landscape buffer between commercial properties and other abutting properties; **TO:** reduce the landscape buffer adjacent to the commercial property to the north to 4.9 feet. These requests are required for redevelopment of the existing Mobil gas station on site.

REPORT IN BRIEF:

The subject site is currently a Mobil gas station with four (4) fuel pumps, a 1500-square foot convenience store, and a separate carwash structure. The existing structures are considered legal non-conforming structures under the B-2, Community Business District. The property is located at the northwest corner of Nova Drive and University Drive; and another gas station, Shell, is located at the southeast corner of the intersection, approximately 200 feet from the Mobil site. The subject site is 40,705 square feet in area and abuts Longhorn restaurant to the north and condominiums to the west.

The applicant is proposing to redevelop the site and replace the existing structures with a new convenience store of 3,192 square feet and a total of six (6) fuel pump stations.

The subject site will lose its legal non-conforming status if more than 20 percent of the structure or building is destroyed by any means. The reconstruction must be in conformity with the current Land Development Code pertaining to the lot size (minimum 43,560 square feet), distance separation from the residential area (minimum 250 feet), and distance separation from another service station (minimum 250 feet).

On September 17, 2003, Town Council approved Variances 2, 3 and 5, but denied Variance 1. Variances 2, 3 and 5 expired on September 17, 2004. Therefore, the applicant is reapplying for these four (4) variances. In addition, the applicant also requests a variance to allow the accessory structure (fuel pump canopy) to be higher than the principal building (convenience store), which is in response to the adjacent neighbors' comments.

The requested variances are the minimum variances required for the proposed renovation of the parcel. The applicant has met the adjacent neighbors and received written support from the immediate neighbors upon the denial of one of the variances by Town Council in 2003.

PREVIOUS ACTIONS: At the August 4, 2004 Town Council meeting, Town Council tabled Variances 1 and 4 to October 20, 2004. The applicant has reapplied for three (3) variances (Variance 2, 3, and 5) that were previously approved by Town Council, but expired on September 17, 2004. This first tabling was requested by the applicant because the applicant wishes to process all of the five (5) variances together.

CONCURRENCES: At the September 22, 2004 Planning and Zoning meeting, the Board made the following motions:

Variance 1: Ms. Lee/Mr. McLaughlin 2nd, approval (Motion carried 4-0 with Mr. Stevens absent).

Variance 2: Ms. Lee/Mr. McLaughlin 2nd, approval (Motion carried 4-0 with Mr. Stevens absent).

Variance 3: Ms. Lee/V-C Turin 2nd, approval (Motion carried 4-0 with Mr. Stevens absent).

Variance 4: Ms. Lee/V-C Turin 2nd, approval (Motion carried 4-0 with Mr. Stevens absent).

Variance 5: Mr. McLaughlin/V-C Turin 2nd, to approve as it reflects on the plan and that the landscape plan should meet or exceed Code (Motion carried 4-0 with Mr. Stevens absent).

FISCAL IMPACT: N/A

RECOMMENDATION(S): Staff finds that the subject application complete and suitable for transmittal to the Town Council for further consideration.

Attachment(s): Planning Report, Justification letter, Land use map, Subject site and Aerial map.

Application #: V 5-1-04, Mobil Oil Corp.
Exhibit "A"

Revisions: 9/23/04
Original Report Date: 9/13/04

TOWN OF DAVIE
Development Services Department
Planning & Zoning Division Staff
Report and Recommendation

Application Information

Owner:

Name: Mobil Oil Corporation
Address: P. O. Box 4973
City: Houston, TX 77210
Phone:

Petitioner:

Progressive Development Group, Inc.
5205 S. Lois Avenue
Tampa, FL 33611
(813) 805-0313

Background Information

Date of Notification: September 15, 2004

Number of Notifications: 66

Application History:

At the July 14, 2004 Planning and Zoning Board meeting, the Board made a motion to table Variances 1 and 4 to September 22, 2004. The applicant has reapplied for three (3) variances (Variance 2, 3, and 5) that were previously approved by Town Council, but expired on September 17, 2004. This first tabling was requested by the applicant because the applicant wishes to process all of the five (5) variances together.

At the September 22, 2004 Planning and Zoning Board meeting, the Board made motions to approve the requested variances.

Application Request:

Five (5) variances to allow for the redevelopment of the existing gas station:

6. **FROM:** Section 12-34 (Y)(2) of the Town of Davie Land Development Code which requires a minimum distance of 250 feet, shortest airline measurement, between the nearest points on any **lot** to be occupied for fuel pump islands and/or service station purposes and any **lot** which is zoned, or land use plan designated residential; **TO:** reduce the distance from the proposed gas station **lot line** to a residential property **lot line** to 25 feet;
7. **FROM:** Section 12-34 (Y)(2) of the Town of Davie Land Development Code which requires a minimum distance of 250 feet between a **lot** to be occupied by fuel pump islands and any **lot** occupied for service station purpose; **TO:** reduce the distance to another gas station to approximately 200 feet;

8. **FROM:** Section 12-34 (Y)(1) of the Town of Davie Land Development Code which requires a minimum lot area of 43,450 square feet for a lot to be occupied by fuel pump islands, **TO:** reduce the lot area to 40,057 square feet;
9. **FROM:** Section 12-33 (A)(4) of the Town of Davie Land Development Code which requires that in all districts an accessory building or structure shall not be of greater height than a principal building on the plot; **TO:** allow the fuel pump canopy higher than the mean roof height of the convenience store;
10. **FROM:** Section 12-107 (D)(4) of the Town of Davie Land Development Code which requires a minimum of ten-foot landscape buffer between commercial properties and other abutting properties; **TO:** reduce the landscape buffer adjacent to the commercial property to the north to 4.9 feet. These requests are required for redevelopment of the existing Mobil gas station on site.

Address/Location: 2399 S. University Drive, Generally located at the northwest corner of Nova Drive and University Drive

Future Land Use Plan Designation: Commercial

Zoning: B-2 (Community Business District)

Existing Use: Gas Station and Convenience store

Proposed Use: Gas Station and Convenience store

Parcel Size: 1.74 gross acres (75,900 square feet)
.92 net acres (40,705 square feet)

	<u>Surrounding Uses:</u>	<u>Surrounding Land Use Plan Designation:</u>
North:	Restaurant (Longhorn)	Commerce
South:	Nova Drive, Funeral Home	Commercial
East:	Restaurant (Pollo Tropical)	Commercial
West:	Condo Buildings	Residential (10DU/AC)

Surrounding Zoning:

North: B-2 (Community Business District)
South: B-2 (Community Business District)
East: B-2 (Community Business District)
West: R-4A (Old Code) (Planned Apartment District)

Zoning History

Previous Request on same property:

The plat, Gulf University and Nova, was approved by the Broward County Board of Commissioners on August 29, 1979.

The site plan for the existing Mobil Gas Station was approved by the Town Council on August 15, 1979.

On September 17, 2003, Town Council approved variances 1, 3, and 4 and denied variance 2 of the variance application V 5-2-03. The requested variances are as follows:

- 1) **FROM:** Section 12-34 (Y)(1) of the Town of Davie Land Development Code which requires a minimum lot area of 43,560 square feet for a lot to be occupied by fuel pump islands, **TO:** reduce the lot area to 40,057 square feet;
- 2) **FROM:** Section 12-34 (Y)(2) of the Town of Davie Land Development Code which requires a minimum distance of 250 feet between a lot to be occupied by fuel pump islands and any lot of residential use; **TO:** reduce the distance from the subject property to be occupied by the proposed fuel pump islands to a residential property to 25 feet;
- 3) **FROM:** Section 12-34 (Y)(2) of the Town of Davie Land Development Code which requires a minimum distance of 250 feet between a lot to be occupied by fuel pump islands and any lot occupied for service station purpose; **TO:** reduce the distance to another gas station to approximately 200 feet;
- 4) **FROM:** Section 12-107 (D)(4) of the Town of Davie Land Development Code which requires a minimum of ten-foot landscape buffer between commercial properties and other abutting properties; **TO:** reduce the landscape buffer adjacent to the commercial property to the north to 4.9 feet.

On March 17, 2004, Town Council approved Resolution R-2004-59 to waive the one-year time limit for Variance 2 (V 5-2-03), previously denied.

Application Details

The subject site is currently a Mobil gas station with four (4) fuel pumps, a 1500-square foot convenience store, and a separate carwash structure. The existing structures are considered legal non-conforming structures under the B-2, Community Business District. The property is located at the northwest corner of Nova Drive and University Drive; and another gas station, Shell, is located at the southeast corner of the intersection, approximately 200 feet from the Mobil site. The subject site is 40,705 square feet in area and abuts Longhorn restaurant to the north and condominiums to the west. The applicant is proposing to redevelop the site and replace the existing structures with a new convenience store of 3,192 square feet and a total of six (6) fuel pump stations.

The subject site will lose its legal non-conforming status if more than 20 percent of the structure or building is destroyed by any means. The reconstruction must be in conformity with the current Land Development Code pertaining to the lot size (minimum 43,560 square feet), distance separation from the residential area (minimum 250 feet), and distance separation from another service station (minimum 250 feet).

On September 17, 2003, Town Council approved Variances 2, 3 and 5, but denied Variance 1. Variances 2, 3 and 5 expired on September 17, 2004. Therefore, the applicant is reapplying for these four (4) variances. In addition, the applicant also requests a variance to allow the accessory structure (fuel pump canopy) to be higher than the principal building (convenience store).

Applicable Codes and Ordinances

1. Section 12-39 (2) of the Town of Davie Land Development Code requires that should nonconforming structure or building be destroyed by any means to an extent of more than 20 percent of its assessed value at the time of destruction, as determined by the Broward County Property Appraiser, it shall not be reconstructed except in conformity with the applicable regulations.
2. Section 12-34 (Y)(2) of the Town of Davie Land Development Code which requires a minimum distance of 250 feet, shortest airline measurement, between the nearest points on any lot to be occupied for fuel pump islands and/or service station purposes and any lot which is zoned, or land use plan designated residential.
3. Section 12-34 (Y)(2) of the Town of Davie Land Development Code which requires a minimum distance of 250 feet between a lot to be occupied by fuel pump islands and any lot occupied for service station purpose.
4. Section 12-34 (Y)(1) of the Town of Davie Land Development Code which requires a minimum lot area of 43,450 square feet for a lot to be occupied by fuel pump islands.
5. Section 12-33 (A)(4) of the Town of Davie Land Development Code which requires that in all district an accessory building or structure shall not be of greater height than a principal building on the plot.
6. Section 12-107 (D)(4) of the Town of Davie Land Development Code which requires a minimum of ten-foot landscape buffer between commercial properties and other abutting properties.
7. Section 12-309, Review for variance.

Comprehensive Plan Considerations

Planning Area: The subject property falls within Planning Area 4. This Planning Area is bordered by SR 84 on its north, University Drive on its east, Flamingo Road on its west, and an irregular border on its south that corresponds to Nova Drive and, SW 14 Street and the Village

of Harmony Lakes development. A portion of the University Drive and SR 84 commercial corridors are included in this area, as are several planned residential communities typically developed at five dwellings per acre, but in some cases up to ten, including Arrowhead Golf Course and Country Club, Village of Harmony Lakes, West ridge, the Ridgeview Lakes developments, Scarborough, Village at Pine Lakes, and the Pine Island Ridge, Park City and Rexmere Village developments, located within an area between Nob Hill Road and Pine Island Road.

Broward County Land Use Plan: The subject site falls within Flexibility Zone 99.

Applicable Goals, Objectives and Policies:

Policy 7-1: The Town shall endeavor to expand its economic base through expansion of the commercial sector of the economy.

Policy 7-3: Zoning regulations shall provide for varying intensities of commercial development and direct application of appropriate districts where compatible with adjacent and surrounding residential uses.

Policy 17-1: Lands designated for non-residential use shall be located in a manner, which facilitates development, but does not adversely impact existing and designated residential areas.

Staff Analysis

The requested variances are required for the proposed renovation of the parcel. The applicant has met the adjacent neighbors and received written support from the immediate neighbors upon the denial of one of the variances by Town Council in 2003. To address the residents' concerns, the applicant is willing to make the following changes to the proposed site plan and structures:

1. Reduce the number of gas dispensers from eight (8) to six (6);
2. Reduce the proposed building from 3,925 square feet to 3,200 square feet;
3. Reduce the height of the proposed store structure;
4. Provide for on-site retention through above ground retention areas, previously retention was proposed as vaulted;
5. Increase the landscape buffers;
6. Provide illumination on and off the property;
7. Increase the rear wall adjacent to the residential buildings from six (6) feet to eight (8) feet;
8. Remove the car wash from the site.

Variance 1: **FROM:** Section 12-34 (Y)(2) of the Town of Davie Land Development Code which requires a minimum distance of 250 feet, shortest airline measurement, between the nearest points on any lot to be occupied for fuel pump islands and/or service station purposes and any lot which is zoned, or land use plan designated residential; **TO:** reduce the distance from the proposed gas station to a residential property to 25 feet.

This variance was previously denied. The west property line of the subject site is 25 feet from a condominium building to the west. There is a 25-foot access easement between the properties and a six-foot high concrete wall along the west property line of the Mobil site. The applicant has proposed increasing the wall to eight (8) feet high. In addition, a ten-foot landscaping area with Cocoplum hedges and shade trees will be provided outside the wall. The existence of the easement and the wall, along with the proposed landscaping will minimize the impact of the variance to the residential area.

***Variance 2: FROM:** Section 12-34 (Y)(2) of the Town of Davie Land Development Code which requires a minimum distance of 250 feet between a lot to be occupied by fuel pump islands and any lot of residential use; **TO:** reduce the distance from the subject property to be occupied by the proposed fuel pump islands to a residential property to 25 feet.*

This variance was previously approved, but expired on September 17, 2004. The subject site is approximately 200 feet from the Shell gas station at the southeast corner of University Drive and Nova Drive. Since no use will be changed on the subject site, the impact of the variance is minimal.

***Variance 3: FROM:** Section 12-34 (Y)(1) of the Town of Davie Land Development Code which requires a minimum lot area of 43,450 square feet for a lot to be occupied by fuel pump islands.*

This variance was previously approved, but expired on September 17, 2004. The subject site is 40,705 square feet in area, and has a 200-foot frontage on Nova Drive and a 145-foot frontage on University Drive. The property is a legal lot of record and platted, although under the current code, the minimum lot size required for a gas station is 43,560 square feet.

***Variance 4: FROM:** Section 12-33 (A)(4) of the Town of Davie Land Development Code which requires that in all districts an accessory building or structure shall not be of greater height than a principal building on the plot; **TO:** allow the fuel pump canopy to be higher than the mean roof height of the convenience store.*

This variance is a result of meeting with the adjacent residents upon the denial of Variance 1. As requested by the residents, the applicant will lower the overall height for the convenience store from the original proposed 25'-6" to 21'-2". The mean roof height for the convenience store is 18'-4". The minimum clearance from the ground to the bottom of the canopy required by Exxon Mobil is 15'-6". The canopy is 3' high with a 2' high standing seam metal roof matching the convenience store. Therefore, the overall height for the fuel pumps canopy is 20'-6", which is 2'-2" higher than the convenience store.

The intent of the code to require the main structure has greater height than the accessory structure is to ensure that the accessory building not to overpower the main structure in terms of mass and scale. In this case, the mass and scale of the convenience store will still be the main focal point as the canopy is an open structure. This variance is in response to the adjacent residents' comments and is the minimum variance to meet the residents requirement and the Exxon Mobil design requirements.

Variance 5: **FROM:** Section 12-107 (D)(4) of the Town of Davie Land Development Code which requires a minimum of ten-foot landscape buffer between commercial properties and other abutting properties; **TO:** reduce the landscape buffer adjacent to the commercial property to the north to 4.9 feet.

This variance was previously approved, but expired on September 17, 2004. The subject site is 2,855 square feet smaller than the minimum lot area required by the code. The proposed site plan indicates two accesses to the site, one on Nova Drive and one on University Drive. The size of the parcel creates the hardship for the placement of the dumpster enclosure to accommodate the waste truck pick up while meeting the ten-foot landscaping buffer requirement at the north property line. The applicant is requesting to reduce the landscaping buffer adjacent to the Longhorn restaurant site to 4.9 feet with Cocoplum hedges. There is a five-foot landscaping area with canopy trees along the property line on the Longhorn restaurant site. The combined 9.9-foot landscaping area with Cocoplum hedges will provide a reasonable buffer and minimize the impact of the variance to the adjacent parking lot on the Longhorn restaurant site.

The five (5) requested variances are the minimum variances to renovate the Mobil site with the same use. However, no variance will be required if the applicant develops the site with many other uses permitted in the B-2 zoning district, such as retail stores. The variances are caused by the intention of the applicant to renovate the site with the same use as a gas station. Therefore, the hardship is self-created.

Finding of Facts

Variances:

Section 12-309(B)(1):

The following findings of facts apply to the variance request.

- (a) There is a special circumstance or condition applying to the land or building for which the variance is sought, which circumstance or condition is peculiar to such land or building and does not apply generally to land or building in the same district;

The subject site has been used as a gas station with a convenience store since 1980. The variances to allow the redevelopment of the site as a gas station and convenience store will have minimum impact over the existing gas station. The parcel has been platted and the structures are legal-nonconforming. Without the variances, the site is prevented from improving and meeting the current Land Development Code. In addition, the residents requested the applicant lower the convenience store height and this creates the hardship for the proposed gas canopy height.

and that said circumstance or condition may not be such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of such land or building for which the variance is sought;

The applicant desires to reconstruct the gas station on a property that is no longer allowed under the current Land Development Code due to the parcel size and distance separations from both the residential

uses and another gas station. The property is zoned B-2, Community Business District, and there are many other permitted uses rather than a gas station allowed on the subject site. The reasonable use of the property will not be deprived because the applicant can build other commercial buildings, such as a retail store, without a variance.

and the alleged hardship is self-created by persons having an interest in the property.

It is the applicant's intention to reconstruct the gas station on the subject site. The alleged hardship is self-created.

- (b) Granting of the variance may be necessary for the reasonable use of the land or building and that the variance as requested is the minimum variance that will accomplish this purpose.

Granting of the variance will allow the applicant to redesign the site and update the site to meet the current code. The variances are the minimum variances to allow the redevelopment of the gas station to occur.

- (c) Granting of the requested variances will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Granting of the variances will allow the redevelopment to occur and the site will be substantially improved. Although the landscaping buffer adjacent to the parking lot on the Longhorn restaurant site will be reduced to 4.9 feet, the impact to the adjacent property is minimized by the proposed Cocoplum hedges and existing five-foot landscaping area on the Longhorn property. The existence of the 25-foot easement and the eight-foot high wall, along with the proposed landscaping will minimize the impact of the variance to the residential area to the west. In addition, the variance to allow the fuel pump canopy higher than the convenience store is a result of the residents' requests. As such, granting of the variance will not be injurious to the neighborhood but may improve the overall existing appearance of the neighborhood.

Staff Recommendation

Staff finds the subject application complete and suitable for transmittal to the Planning and Zoning Board and the Town Council for further consideration.

Planning & Zoning Board Recommendation

At the September 22, 2004 Planning and Zoning meeting, the Board made the following motions:

- Variance 1: Ms. Lee/Mr. McLaughlin 2nd, approval (Motion carried 4-0 with Mr. Stevens absent).
Variance 2: Ms. Lee/Mr. McLaughlin 2nd, approval (Motion carried 4-0 with Mr. Stevens absent).
Variance 3: Ms. Lee/V-C Turin 2nd, approval (Motion carried 4-0 with Mr. Stevens absent).

- Variance 4: Ms. Lee/V-C Turin 2nd, approval (Motion carried 4-0 with Mr. Stevens absent).
- Variance 5: Mr. McLaughlin/V-C Turin 2nd, to approve as it reflects on the plan and that the landscape plan should meet or exceed Code (Motion carried 4-0 with Mr. Stevens absent).

Town Council Action

Exhibits

- 1) Justification letter,
- 2) Site Plan
- 3) Subject Site Map,
- 4) Land Use Map and Aerial

Prepared by: _____

Reviewed by: _____

JUSTIFICATION STATEMENT
Mobil SERVICE STATION RAS No. 10514(02-CVF)
2399 SOUTH UNIVERSITY DRIVE

Progressive Development Group, Inc. is representing ExxonMobil Oil Corporation for the raze and rebuild of the existing Mobil Service Station located at 2399 South University Drive, Town of Davie, FL. The site is rectangular shape consisting of a 1,506 Sq.Ft. Convenience Store, 489 Sq.Ft. Car Wash and Canopy with (4) four fuel dispensers (8-fueling positions). The proposed rebuild consists of a 3,192 SF Convenience Store and Canopy with (6) six dispensers (12-fueling positions). The new facility will maintain the 24-hour operation to serve the community. The proposed use is consistent with the current B-2 zoning. The adjacent zoning to the North and West is B-2, and roadways to the east (University Drive) and south (NW 24th Street).

Due to the shape and size of the existing site, it is not possible to rebuild the modern facility and meet the current LDC requirements. Therefore, ExxonMobil is requesting the following variances:

1. **From:** Section 12-34 (Y) (1) of the Town of Davie Land Development Code, which requires a minimum Lot area of 43,560 square feet. For a lot to be occupied by fuel pump islands. **To:** reduce the lot area to 40, 057 square feet.
2. **From:** Section 12-34 (Y) (2) of the Town of Davie Land Development Code which requires a minimum distance of 250 feet between any lot occupied fuel pump islands any lot of residential use; **To:** reduce the distance from the lot containing fuel pump islands to a residential property to 25 feet.
3. **From:** Section 12-34 (Y)(2) of the Town of Davie Land Development Code, which requires a minimum distance of 250 feet between a lot occupied by fuel pump islands and any lot occupied for service station purpose. **To:** reduce the distance to another gas station to approximately 200 feet.
4. **From:** Section 12-107 (D)(4) of the Town of Davie Land Development Code, which requires a minimum of ten-foot landscape buffer between commercial properties and other abutting properties. **To:** reduce the landscape buffer adjacent to the commercial property to the north to 4.9 feet.
5. **From:** Section 12-33 (A)(4) of the Town of Davie Land Development Code, which requires the height of the principal structure to be of greater height than that of the accessory structure. **To:** eliminate the requirement of the principal structure height to be greater than that of the accessory structure.

CRITERIA FOR REVIEWING VARIANCE REQUESTS

- 1). There are special circumstances or conditions applying to the land or building for which the variance is sought, which circumstances or conditions are peculiar to such land or buildings and do not apply generally to land or buildings in the same district, and that said circumstances or conditions are such that the strict application of the proposed visions of this chapter would deprive the applicant of the reasonable use of such land or building for which the variance is sought, and that alleged hardship is not self created by any person having an interest in the property;

The existing Mobil Service Station was constructed in 1980 prior to the adoption of the current Land Development Code. The variance is necessary for the reasonable raze and rebuild of the existing service station.

- 2). The granting if the variance is necessary for the reasonable use of the land or building and that the variance as requested is the minimum variance that will accomplish this purpose.

ExxonMobil has served the community and has been a good neighbor for 22-years and wishes to continue. Do to the size of this property and the current Land Development Code the raze and rebuild is not possible without the granting of the variances.

- 3). That granting the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The redevelopment of the facility will not be detrimental to the public welfare, but will result in a safer facility. The existing facility has two driveways on University Drive and one driveway on N.W. 24th Street. The existing driveway on University Parkway closest to the intersection will be closed. This driveway closure will result in reduced turning movement conflicts resulting in a safer site for both pedestrians and motorists. New site lighting will illuminate the site in accordance with the Land Development Code and increase public safety.

The rebuild will also Support the City's desire for quality developments. The 22-year old service station is deteriorated and the rebuild will enhance the sites appearance. The landscape buffer adjacent to University Drive will increase by 16 feet and the landscape buffer adjacent to NW 24th Street will increase 5.5 feet. All existing mature oaks adjacent to NW 24th Street will remain. The increased landscape buffers and the preservation of the existing oak trees will enhance the site's appearance. Architectural elevation drawings are included in this submittal for staff review and comment. The proposed Convenience Store will contain multiple rooflines with barrel tile, columns to break up the blank walls, and decorative bull nose/cornice trim. The canopy will have a mansard roof with barrel tile. The raze of the existing car wash will minimize the sound impact to the neighborhood and enhance the appearance of the site.

PRESSMAN & ASSOCIATES, INC.

Governmental & Public Affairs

TO: The City of Davie; The Honorable Mayor and Council Members
FROM: Todd Pressman
DATE: 12/21/03
RE: Mobil Oil at Nova and University

Please accept this communication as a request for early consideration of a variance for the Mobil Oil site at University and Nova Drives. This site went thru the City process for review of variances less than one year ago and was denied. This communication seeks the support of the City Council to allow the review to occur again, but to allow that review with less than the full year that is usually required to allow re-consideration.

This request is based upon a number of different and important factors:

1) Changes to the Site Plan and Structures proposed.

- a. Reduce the number of gas dispenser locations to 6, from 8 previously proposed.
- b. Reduce the size of the proposed building to 3,200 SF, from 3,925 SF previously proposed.
- c. Reduced the height of the proposed store structure.
- d. Revised retention for on-site and above ground, where previously retention was proposed as vaulted.
- e. Increase landscape buffer, provide illumination on and off the property, increase rear wall height to 8', increased fencing, remove car wash and soap spray concerns.

2) Demonstration of Support by the Immediate Neighbors

- a. Letters of support from 4 abutting businesses (one of which is a residential rental community).
- b. Signatures of support on the issue from 93 immediately surrounding neighbors
- c. E-mail from the President of the Valencia Village Home Owner's Association confirming the unanimous vote by the Board of Directors in support of the issue.

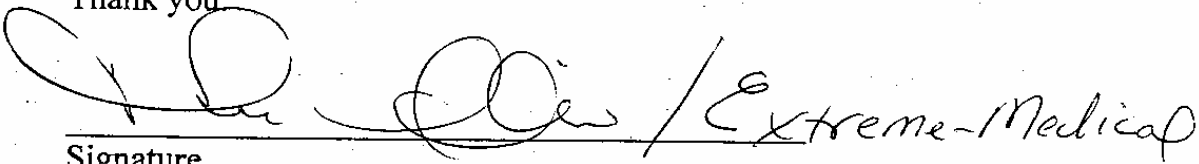
3) American Planning Assoc. Article/Non-Conforming Uses

Article from the Planning Association that study's and directs new views on the use and existence Non-Conforming Uses.

The City of Davie, Florida:

Please accept this letter as a communication that as a very closely located neighbor to the Mobil gas station at Nova and University roadways, being directly across Nova Road, I support the improvements, investment and changes that are proposed at this Mobil station. This represents a substantial upgrade at the site, and the correction of several site issues that are intruding to the area currently. Please support these changes.

Thank you

 / Extreme-Medical

Signature

7900 Nova Drive Ste 208 Davie FL 33324

Address

954-670-0779

Phone

The City of Davie, Florida:

Please accept this letter as a communication that as a very closely located neighbor to the Mobil gas station at Nova and University roadways, being directly across Nova Road, I support the improvements, investment and changes that are proposed at this Mobil station. This represents a substantial upgrade at the site, and the correction of several site issues that are intruding to the area currently. Please support these changes.

Thank you.

Bonnie Riha
Signature

7900 Nova Dr, Suite 207, Davie, FL 33324
Address

954-382-8998
Phone

The City of Davie, Florida:

Please accept this letter as a communication that as a very closely located neighbor to the Mobil gas station at Nova and University roadways, being directly across Nova Road, I support the improvements, investment and changes that are proposed at this Mobil station. This represents a substantial upgrade at the site, and the correction of several site issues that are intruding to the area currently. Please support these changes.

Thank you.

Signature

Address

Phone

Dave Rooy

7901 SW 24th Suite 201

Davie FL 33324

(954) 424-9339

Nancy Rod Berg

To: Tom_Trux@davie-fl.gov
Cc: Mike_Crowley@davie-fl.gov
Subject: Exxon/Mobile variance

Dear Mayor Trux,

The Board of Directors of Valencia Village Condominium Association held their monthly meeting September 9th.

At that meeting, representatives of Exxon/Mobile (Mr. Todd Pressman and Mr. Bret Neaviril) gave a presentation on Exxon's request to re-design/renovate their property at the NW corner of University & Nova Dr.

We appreciate Mr. Pressman & Mr. Neaviril for taking the time to address our members concerns on this matter.

A motion was made by Rod Berg, 2nd by Kathy McGraw to:
Accept Exxon/Mobile's variance request pending approval by the City of Davie building a zoning committee with Town Board concurrence.

motion passed unanimously

Please feel free to contact me concerning this matter.

Sincerely,

Rod Berg, President
Valencia Village condominium Association
Res: 954-423-6678 cell: 954-296-9237

FACSIMILE TRANSMITTAL SHEET

TO: Todd Pressman

FAX #: 727-796-3975

FROM: Rod Berg
Valhalla Village, Davie FL

DATE: 9/29/03

NUMBER OF PAGES IN TRANSMITTAL: 2 (Including this page)

- ☐ FOR YOUR APPROVAL / COMMENTS
- ☐ PLEASE CONTACT UPON RECEIPT
- ☐ AS YOU REQUESTED
- ☐ PER OUR DISCUSSION
- ☒ FOR YOUR INFORMATION
- ☐ OTHER: _____

Todd,
Hope this helps.
Mayor TRux & Councilman Crowley
should receive this by E-mail this morning.

Have a good week,

Rod 9/29

TO THE TOWN OF DAVIE:

As residents and citizens closely located to the Mobil Gas Station at Nova and University Roadways, we strongly ask your support to allow the elimination of the existing gas station and allow the re-building of an improved, new Mobil station and convenience store with no car wash facility.

NAME	ADDRESS	PHONE
Ruth Liechtenberg	165 Valencia Dr.	954 424 5882
Leon Liechtenberg	" "	" "
Charles M Henry	12 S. Valencia	
Paul Smith	59 Madrid Lane Davie	954 475 0891
Alice Smith	59 Madrid Lane Davie	954 475 0891
Hayde - Ramoses del Valle		954 693-9181
Doug Olson	13 Madrid Ln	954-850-7092
HORACE L. WEBB	14 MADRID LN	954. 475-0096
LILA L. WEBB	14 MADRID LN	954. 475-0096
Eddy Rincon	27 MATADOR LANE	954-424-2378
Marion Rincon	27 Matador Lane	954-424-2378
Sam Vallejo	31 Matador Lane	954-472-0548

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NAME	ADDRESS	PHONE
NEZMA ALBRYM	35 Matador	
Ruth Singh	34 Matador Ln Davie, 33224	
Paul Lowtan		
Kavita Lowtan		954 - 370-0278
Diana Duggs	36 Matador Lane	954-424-1881
Justina Duggs	38 Matador Lane	
Juan M Segura	39 Matador Lane	
Heather Franco	39 Matador Lane	
Evelina Segura	39 Matador Lane	
Jorge Segura	39 Matador Lane	
Luis J. Fuentes	41 Matador Lane	
M. H. H.	43 MATADOR LN	

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NAME

ADDRESS

PHONE

HENANDEZ TOBAR 44 Matador (954) 577 9658

JOELAY TOBAR 44 Matador (954) 577 9658

Elizabeth Peters 47 Matador Ln. (954) 577-1010

Laura Parson 49 Matador Lane 954-236-2442

John Parson 49 Matador Lane 954-236-2442

Michael Hall 32 Matador lane 954-236-5003

Eric Michael 18 Madrid lane 954-472-4058

JACK MALHOFF 36 Matador Ln 954-339-6969

RICHARD STOCKWELL 23 MATADOR LANE 954-424-4524

MONICA CARDENAS 17 MATADOR LANE 954-425-2787

MICHAEL SIMMONS 6 MATADOR LANE 954-915-6899

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NAME	ADDRESS	PHONE
STANLEY FRITZSON	7990 SW 24 th PL DAVIE, FL 3324	954-370-1584
MICHAEL PELLEGRINO	7990 DAVIE FL 3324	954-980-4545
MARISA PELLEGRINO	SAME	SAME.
R. PELLEGRINO	SAME	SAME.
M. Petrucci	SAME.	954 547-8884.
O. Simpson	7990 SW 24 PL DAVIE FL 33024	954-336-7943
N. Simpson	11	11
M. Ronald T. D'Angelo	7970 SW 24 DL D. F 33324	954-4521280
Rachel T. de Melo	7970 SW 24th Pl. Apt. H-1104	(954) 382 382-3584
Frank Powers	7970 SW 24th Pl. Apt H-304	(305) 322-1013
Ed Powers	2451 SW 79th N DAVIE	(954) 916-8910 (954)
Angela Powers	2451 SW 79th N DAVIE	916-8910

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NAME

ADDRESS

PHONE

Lisa Meacham 7970 SW 24th Dr. Apt. H1208 (954) 236-0442

Frank S. Miller 108-954 4760715

Robert McNeilly 2501 SW 79 Ave #303 Davie 33324- 954 612 2717

Andrew Garzekever 2501 SW 79th Ave #102 Davie 954 445-5050

Frank Mackey 2501 SW 79th Ave #102 Davie, FL 954-474-9492

Juan Esteban Pantoja 2501 SW 79th Ave #103 Davie, FL 954-3274654

James R. ... 2501 SW 79th Ave 207 Davie FL

Michael ... 2501 SW 79th Ave Apt 102 954-474-3164

John Salvitti 2601 SW 79th Ave E101 954 290 6299

Enzel Sordani 2601 SW 79th Ave E105 954-686-7147

Leonard F. ... 954 473 1924

Yusef Yarnal 707-722-1788

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NAME

ADDRESS

PHONE

[Signature] 11 Laredo Place Davie 954-882-1046

[Signature] 954 370 9881

Russ Lichtberg 954 424 5882

[Signature] 11

Linda Asuncion 13 Svaleren Dr (954) 472-3610

(954) 472-3610

Jack E. Cas Jr 11 S. 954-370-9489

Juill Nieto 3 Laredo 954 915 8489

Ann Politi 1 Laredo Place 954-473-6162

Glenn Marthe 7 Laredo Place 954-577-9092

Francisca Awan Davie, FL 954.206.4974

Catherine Alvarado Davie FL 954-240-4902

Wai Ling Cherry Davie FL 954 482 3701

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NAME	ADDRESS	PHONE
Yessy J. J.	22 Laredo Pl. DAVIE	952-3715
S. Karpf	27 Lugo Pl DAVIE	954-475-8898
John S. ~	44 Madrid Lane	954-476-0064
Kathy Langston	30 MADRID LANE	954-476-5541
Fla Olmos	24 madrid lane	954)472-9273
Rose Matthe	24 Madrid Lane	954-475-1767
Mary Lu Matchen	23 Madrid Ln	954-475-1767

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PHONE

954-474-4537

954-476-3021

(954) 915-0122

(954) 915-0122

(954) 472-0060

(954) 476 5541

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NAME

ADDRESS

PHONE

Reggie Fecteau 2671 SW 7th Ave #108 954-476-4695

Nathalie Tasse 2671 SW 7th Ave #108 954-476-4695

German Corderos

Q13A Corderos

Ricardo Portales

JAN Fisher

David McDavitt

S Matador Lane

5 2/3 Matador Lane

59 Matador Lane

3 Matador W

2 Matador L

(954) 450 0281

(204) 470 058

Call 370-1515

954 452 8033

954 473 5740

October 28, 2003

Mr. Todd Pressman
Pressman & Associates, Inc.
28870 U.S. Highway 19 N., #300
Clearwater, FL 33761

Dear Mr. Pressman:

I am in receipt and have reviewed the Exxon/ Mobil Oil project color elevations and landscape plan at the North West corner of Nova and University.

The general area of University Drive and Nova has undergone extensive improvements over the past couple of years. These projects have only improved upon the appearance of our property. Your project would further enhance the improvements already done, both municipally as well as privately. The removal of the car wash would reduce the noise and improve that which our clients view when exiting our property by way of Nova Drive. The extensive landscape replacement would further improve the neighborhood. Solely based upon the color elevation and landscape plan you provided, we would support the aesthetic improvement of the Exxon/ Mobil Oil project.

Please keep us posted on the advancement of the redevelopment.

Sincerely,
Fred Hunter Memorial Services, Inc.



Jeff D. Casey
Vice President & General Manager

Funeral Homes

Hollywood at the Cemetery
Hollywood Memorial Gardens Home
6301 Talt Street - Hollywood

Hollywood Downtown
140 S. Dixie Highway - Hollywood

Davie/Cooper City/Plantation
2401 S. University Drive - Davie

Fort Lauderdale
718 S. Federal Highway - Fort Lauderdale

Willon Manors
Kalis Funeral Home
2505 N. Dixie Highway - Willon Manors

Aaron Cremation and Burial Services
6107 Miramar Parkway - Miramar

Cemeteries - Mausoleums

Cemetery Office
6301 Talt Street - Hollywood

Hollywood Memorial Gardens
6301 Talt Street - Hollywood

Hollywood Memorial Gardens North
3001 N. 72nd Avenue - Hollywood

Please Respond to:

Fred Hunter's
P.O. Box 816969
Hollywood - FL 33081-0969

Any number reaches all locations:

Hollywood 954-989-1550
Fort Lauderdale 954-527-1550
Miami 305-624-5500
Toll Free 800-940-1550
Fax 954-987-2997




November 13th, 2003

To Whom It May Concern:

This letter is serving the purpose of stating that Cameron Cove Apartment Homes located on the corner of University Drive and Nova Drive, has no objections to an upgraded gas station being built and look forward to the enhancement of the neighborhood as long as it does not interfere with our ability to conduct our daily business.

Thank you,


Jennifer Gordon
District Manager



MPC Management Corp.

7900 Nova Drive, Suite 201 • Davie, Florida 33324
(954) 452-8100 • Fax: (954) 587-5507

October 30, 2003

Todd Pressman, President
Pressman & Associates, Inc.
28870 US Hwy 19 North
Suite 300
Clearwater, FL 33761

Re: Exxon/Mobil Oil Project

Dear Mr. Pressman,

I have received your documentation regarding the proposed project for renovating the property located at 2399 S. University Drive, Davie, FL 33324.

MPC Management Corp. has no objection to the proposed project and would support the changes noted in the proposed site plan.

Thank you for your request. If you have any further questions, please feel free to contact me at the number above.

Respectfully,



Steven S. Rodriguez
Managing Director



December 4, 2003

Pressman & Associates, Inc.
28870 US. Highway 19 N., Suite 300
Clearwater, Florida 33761

Re: Proposed Site Plan: Mobil Oil

Ladies and Gentlemen:

Thank you for the courtesy of informing us regarding the proposed changes regarding our neighbor, Mobil Oil at the corner of Nova and University, Davie, Florida.

We are in support of the improvements.

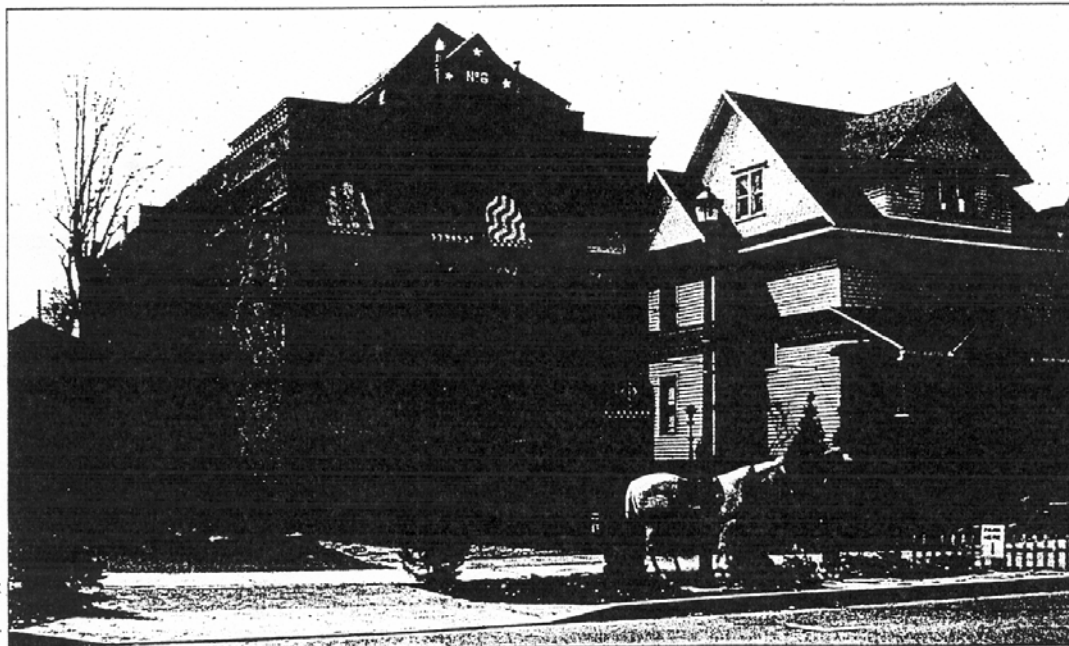
Very truly yours,


Dick Garber

Davie: 7900 SW 24th Street, Suite 202 • Davie, FL 33324 • Phone: (954) 236-0456 • Fax: 236-0468
Tampa: 1202 Tech Blvd. Suite 102 • Tampa, Florida 33619 • Phone: (813) 621-8634 • Fax: 627-9115
Atlanta: 2295 Parklake Drive N.E., Suite 165 • Atlanta, GA 30345 • Phone: (770) 414-0500 • Fax: 414-9484

Pigs in the Parlor or Diamonds in the Rough? A New Vision for Nonconformity Regulation

By Arthur Lentilucci



A functionally obsolete firehouse converted to a retail store that sells crafts.

Most of us who have been involved in zoning administration for any appreciable time have virtually been brought up respecting the sanctity of separation of use and accepting it as an article of faith. After all, every planner and zoner has been well schooled in *Village of Euclid v. Ambler Realty Co.* (272 U.S. 365, 47 S. Ct. 114, 71 Ed 303 (1926)), the seminal case that established the constitutionality of use district zoning. The phenomenon of the nonconformity, born and bred in Euclidean zoning, has always been seen as anathema to this doctrine. And so the theory held that for comprehensive zoning to be successful nonconformities had to be eliminated.

Time and observation have led to the realization that in spite of clear legislative intent and judicial interpretation geared toward their elimination there is a seemingly never-ending inventory of nonconformities. In fact, I have to believe there has been little real progress in eliminating nonconformities in most cities. This has caused me to think anew about regulating nonconformities. Most recently, I have been intently involved in the rewriting of a 25-year-old zoning code and have concluded that the zoning of nonconformities should be approached much differently than it traditionally has been.

... about this article.
Join us online!

From May 19-30 go online to participate in our "Ask the Author" forum, an interactive feature of *Zoning News*. Arthur Lentilucci will be available to answer questions about this article. Go to the APA website at www.planning.org and follow the links to the "Ask the Author" section. From there, just submit your questions about the article using an e-mail link. The author will reply, posting the answers cumulatively on the website for the benefit of all subscribers. This feature will be available for selected issues of *Zoning News* at announced times. After each online discussion is closed, the answers will be saved in an online archive available through the APA *Zoning News* webpages.

ASK THE AUTHOR

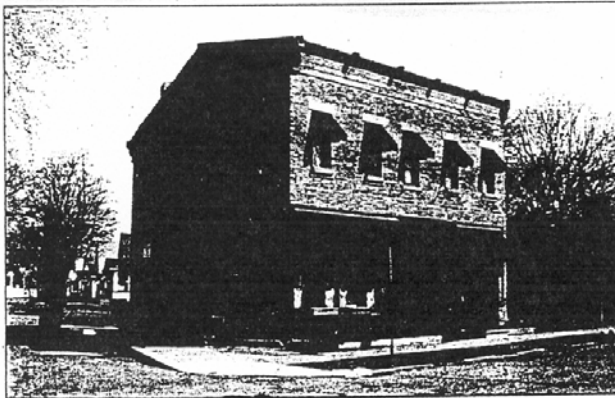
Origins of Policy

Let's take a step back. Euclidean zoning codes neatly prescribed the specific land uses that could be established in various districts throughout a community. Each and every land use would be compartmentalized and appropriately situated in a particular district where a single category of land use would be permitted. Typically, these districts were the basic three: residential, commercial, and industrial. Every residential use would be segregated into a residential zone with like uses—commercial uses with similar commercial uses and the same for industrial uses. Never the twain should meet. The main tenets of comprehensive zoning were the separation of uses for mutual protection, the preservation of property values, and the facilitation of planning efforts to achieve similar community goals. The fly in the ointment was the problem of the nonconformity.

Early drafters were concerned that the whole philosophical basis and justification for comprehensive zoning might be impaired if nonconformities were to be legitimized as part of comprehensive planning and zoning schemes. At the same time it was feared that if these nonconformities were eliminated immediately there would be

of use and building types, traditional codes worked primarily to restrict further investment in nonconformities and eventually to eliminate them. The validity of the comprehensive plan and the success of comprehensive zoning rested on their transformation to conformity or their gradual termination. Joseph Katarincic, an observer of early zoning, noted in 1963 in *Duquesne University Law Review* (Vol. 2, No. 1) that "one difficulty, and by far the most

To achieve conformity of use and building types, traditional codes worked primarily to restrict further investment in nonconformities and eventually to eliminate them.



An aging mixed-use building in the heart of a residential area is now home to a popular upscale restaurant.



An abandoned gasoline service station converted to a bakery and coffee shop in a neighborhood preservation area.

takings challenges and zoning would not be accepted by the body politic. So, the drafters of the first codes foisted a compromise. Inconsistencies were allowed to continue, but regulations were imposed that would cause them eventually to disappear. Restraints were placed on alteration, expansion, intensification, change of use, lapses of use, and restorations, all of which did not apply to permitted uses. The key words were limit, restrict, prohibit, disallow, prevent, discourage, eliminate, and terminate—all uniformly and synonymously negative. These kinds of restrictions are still found in most contemporary zoning codes. They reflect a rigidity in terms of reuse evident in both the directive to eliminate and also in the typical form of relief being the use variance, which, if approved, declassifies the nonconformity and results in its permanency.

Regulation of nonconformities has had the intention and the result of imposed uniformity. Conformity was sought as a means of avoiding potential conflict. The ultimate goal of most zoning codes has been to achieve uniformity of uses within each zoning district, which could only be accomplished by the elimination of those uses and structures that do not conform. Hence, to achieve conformity

serious, is the continuation of the nonconforming use without an effective provision for its elimination. Until some method is devised to permanently eliminate the nonconforming use from our cities and towns, effective city planning cannot be achieved." In retrospect, it seems as though it was too often conformity for the sake of conformity.

In taking this route to purge districts "clean," the restrictions have often been extremely harsh. For instance, many codes trigger abandonment of nonconforming uses when they are discontinued for a period of time, regardless of the intent of an owner or user not to abandon the use. When abandonment does occur, reuse of nonconformities is made difficult; and in many cases the use variance is the prescribed relief, with its demanding and difficult burden of proof. Flexibility in dealing with these "deviant" properties has been considered contrary to the purpose and intent of the zoning regulation and the comprehensive plan on which it is based. Homogeneity has been the goal, the purpose, and the mission.

As urban land-use controls evolved over the course of the 20th century, the players in the zoning game were continually concerned about the undesirable impacts of nonconformities. Along the way, the allowance of nonconforming uses has been characterized by the courts as a "grudging tolerance." This characterization is reflected in the many regulations that

Arthur Lentilucci is the director of zoning for the city of Rochester, New York.

prescribe that nonconforming uses, buildings, and structures should be eliminated as quickly as possible. In fact, the traditional viewpoint is clearly that nonconformities violate the spirit of zoning laws. It was thought that the existence of nonconformities would lead to lowered property values, affect the area's desirability, and result in physical deterioration. However, what has more often been the case is that traditional regulation has fostered vacancy, with buildings falling into disrepair due to their loss of marketability. Also, property value is diminished or destroyed while the property is effectively isolated from the market, tax revenue is lost, and there is difficulty in obtaining mortgage financing and insurance. Marginal uses are encouraged to continue while owners divest, knowing there is little hope of even approximating highest and best use. Reinvestment is inhibited and discouraged as is the creativity and innovation that is often needed to restore and reuse these types of properties. There is an unavoidable negative impact on the neighborhood, ironically as a result of the very regulations that have been put in place for its protection. But are nonconformities always the "pig in the parlor?" I think not.



An obsolete industrial facility converted to loft apartments and office space near residential, commercial, and institutional uses.

Changing Perspectives

All the traditional theory and practice that have contributed to the severe restraint on nonconformities ostensibly served a purpose during the age of industrialism, where heavy, dirty industrial uses were rampant and needed to be restrained from having negative, obliterating impacts on residential areas. This was a time before the advent of comprehensive building codes, long before the information/high-tech revolutions and the advent of environmental consciousness and regulations at all levels of government. This traditional approach persisted through and fostered the era of suburbanization, with its belief system grounded in the separation of use, reverence for the single-family dwelling, and the canonization of the automobile. Zoning has sought to safeguard the future, in the expectation that time will repair the mistakes of the past. In doing so, particularly with respect to nonconformities, zoning has focused so much on protection from the undesirable that it has at the same time discouraged the activity, creativity, and vibrancy that diverse, mixed-use buildings impart to a community.

Times have changed. This is the day of efficient land use, of the reascendency of the urban form; of mixed use, high density, and diversity; of urban places complete with living, working, and recreating opportunities interwoven and designed with a focus on

the public realm rather than on introverted private property interest. Twenty-first-century zoning should no longer dwell on how best to separate uses in the quest for uniformity but how best to blend and mix uses in the interest of harmonizing diversity. Just as the rights to nonconformities have traditionally been restricted in order to protect the community's health, safety, and welfare, why can they not be embellished with more flexibility in using, reusing,

Nonconformities in reality are
not inherently bad and should
be considered as potential
assets for any city
neighborhood rather than as
prima facie detrimental.

cultivating, and recycling them to protect and enhance that same public interest? What is needed is a new outlook with respect to nonconformities—an outlook that sees them as not violating the spirit of zoning and effective land use but rather as part of the heart and soul of the urban framework.

In a nutshell, instead of restraining and eliminating nonconformities based on the false dictum of use separation, the emphasis should be on their use, reuse, and adaptation to current needs and market expressions as contributing members of the neighborhoods in which they reside. This is by no means a legal prescription, nor is it a commentary on the body of law on nonconformities such as was so aptly presented here by Mark S. Dennison ("Change or Expansion of Nonconforming Uses," March 1997). Rather, as a practitioner of zoning, I am suggesting a new strategy for dealing with these zoning orphans, one that recognizes that nonconformities in reality are not inherently bad and that they should be considered as potential assets for any city neighborhood rather than as prima facie detrimental.

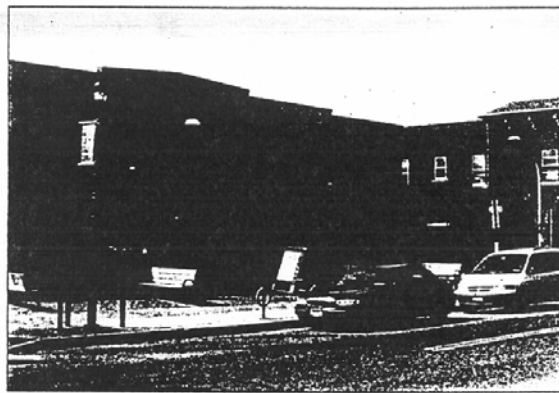
Judging in Context

Whether a particular nonconformity is a negative influence on a neighborhood is much more of a contextual issue than one of inherent problems with the nonconformity itself. It has been acknowledged that, even though a nonconformity may be thought of as a nuisance, it may simply be the right thing in the wrong place. In a more contemporary view of what creates a sense of place, nonconformities may now be considered the right thing for many places. Hence, they should be dealt with on a case-by-case basis rather than by general requirements that seek to extinguish them. Selective removal rather than blanket elimination is a concept that should underlie nonconformity regulations if zoning codes are to evolve in the direction of promoting good urban form, diversity, activity, and creating quality mixed-use urban neighborhoods.

As long as zoning exists as a land-use tool, there will be nonconformities and the unique challenges they represent. As such, nonconformities should not be uniformly perceived as problematic and requiring elimination. Certainly, some nonconformities can be detrimental to surrounding properties and community goals and should be eliminated. The conventional wisdom on the treatment of nonconformities has begun to change through the acceptance of mixed-use development districts, overlay zones, allowances for residential uses in commercial districts, and loft-type residential

conversions. It is better understood than at any time in the recent past how essential mixed use is to a lively, vibrant urban environment. Trends toward form codes and emphasis on design in recognizing the benefits of recycling buildings rather than uses also bode well for the future constructive use and reuse of nonconformities. The affording of viable opportunities for adaptive reuse of some of our cities' older, albeit nonconforming, buildings is a recognition that these unique assets can make a strong contribution to a city's vitality and sense of place.

The regulation of all types of nonconformities—nonconforming uses as well as nonconforming structures—needs to be examined through fresh eyes. However, the nonconforming structure not designed for a use permitted in the district in which it is located, whether housing a conforming or a nonconforming use, is of particular interest. The nonconforming use in the structure designed for conforming use generally has viable reuse options and can more easily be readjusted to market alignment for the use and purpose for which it was originally designed. The truly nonconforming structure type, the very different structure in the midst of structures of alternative design and purpose, has posed the



A former heavy service/industrial facility successfully adapted to a neighborhood retail use.

greatest issue and holds the greatest promise. It is these types of nonconformities that can make significant contributions to a neighborhood and afford invaluable opportunities to express the diversity of use and form that best reflect the beauty of the urban tapestry.

If the "disease" associated with nonconformities has been spread by restriction, elimination, prohibition, and termination, then the prescription for health is harmony, diversity, variety, charm, historic conservation and focus on form—the harmony of diversity. Rather than being perceived as corruptively infectious, they must represent and give rise to an infectious enthusiasm and desire to adapt, revitalize, and reuse.

Nonconforming structures provide an existing infrastructure readily capable of housing mixed-use opportunities and the diversity and interest they promote.

Process Issues

Flexibility in relief is also essential. Processes for dealing with nonconformities must afford much more flexibility to deal with their irregularity and peculiarity. These processes must involve public participation and input in decision making and also must assure continued protection for the neighborhood. Traditionally, the use variance has most often been the prescribed means of

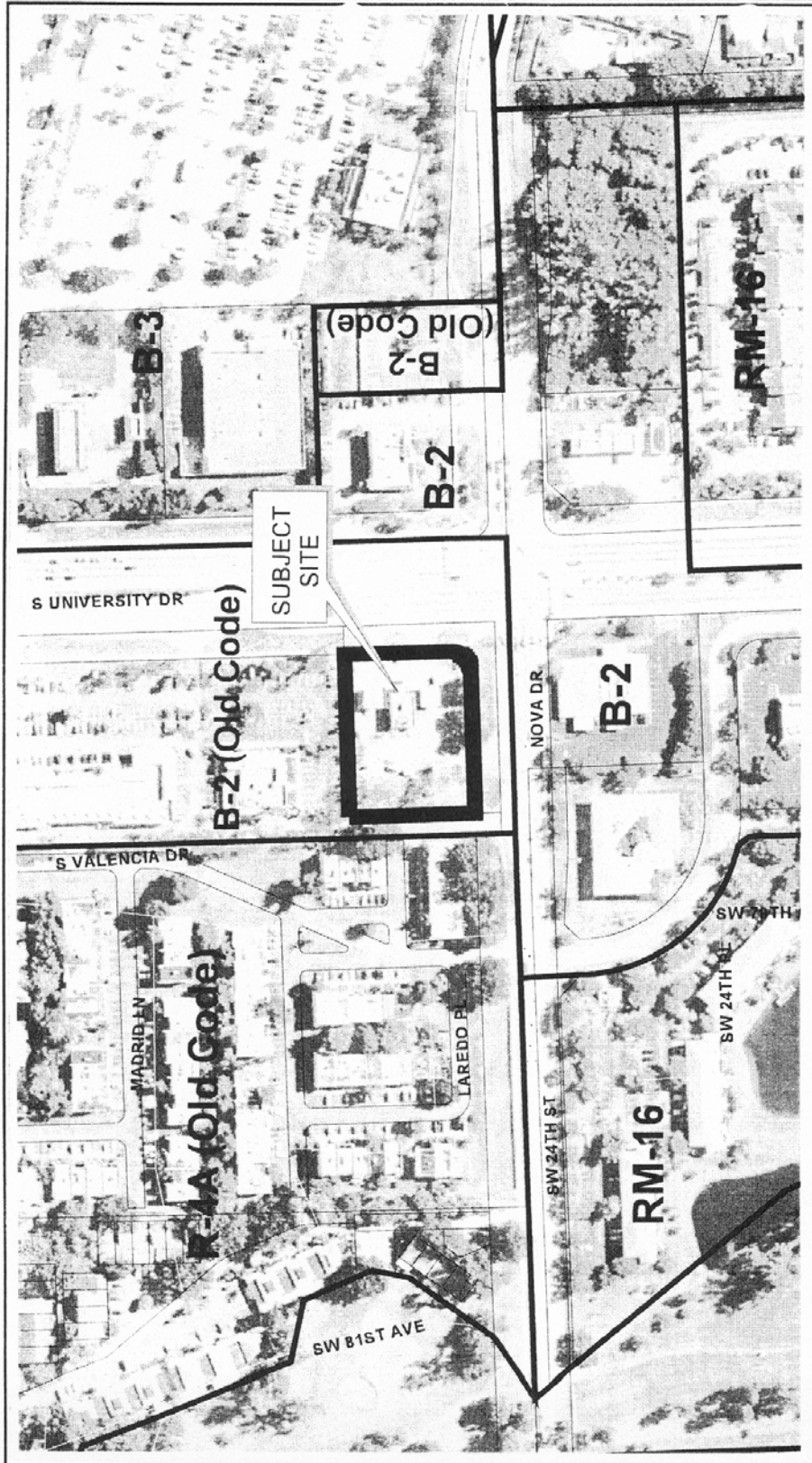
relief to overcome the myriad of restrictions on nonconformities. This is a difficult burden of proof for the nonconforming user and also serves to make the use permanent if granted. This dilemma often nullifies neighborhood acceptance over the valid concern with lifetime vesting and permanency of use rights.

It has been acknowledged that, even though a nonconformity may be thought of as a nuisance, it may simply be the right thing in the wrong place.

In the case of expansions, intensifications, and enlargements of nonconforming uses, it is preferable to employ the area variance as the means of relief. If granted, then the approval is to expand, intensify, or enlarge the nonconformity, but the use essentially remains nonconforming as modified. It is a vehicle through which the benefits to the user can be weighed against the potential detriments to a neighborhood. At the same time it does not declassify a use as nonconforming.

With respect to reoccupancy of nonconforming uses and structures, especially in structures not designed for conforming use, the special use permit is the most attractive option. The suggestion is that this technique be employed to restore nonconforming uses to their prior, original, or lesser intensity or to reestablish a different use of similar intensity. This inherently keeps the restored use at a level commensurate with the prior use of the building and avoids excursions into more intensive uses. Special use permits are typically not permanent, as are use variances, and they offer both greater flexibility and continued controls over reuse. Special use permits also can be readily conditioned to clarify the terms of reuse and to set operational constraints as necessary to protect adjacent properties. Time-limited special permit approvals also can be employed as a means of monitoring a use over a reasonable period of time to ensure that the conditions and operational limitations are in fact accomplishing their desired goal. Specific standards for this category of special permit can be adopted that allow reoccupancy for the accommodation of neighborhood walk-to-service uses, walk-to-work opportunities, live-work spaces, and the reuse of buildings with architectural or historic value. Using the special permit at once states a legislative intent that nonconformities are permissible, as is their continued use so long as in their particular location they are not detrimental to the surrounding neighborhood. This is a far cry from grudging acceptance.

Another situation with respect to discontinuance needs to be addressed. That is the case where the nonconforming owner or user is befallen by personal circumstances, or by market or other matters that contribute to the inability to reoccupy a nonconformity within the established time period to avert abandonment of use. These may be situations where the owner or user fully intends to continue the nonconformity and is willing to maintain it and to make further investments. However, due to circumstances beyond their control, they cannot meet the codified deadline for reoccupancy. In these instances, the zoning administrator, after public notice and opportunity for comment, should be authorized to extend the time frame for abandonment. If the particular nonconformity has been problematic for the neighborhood and it is discovered that the nonconforming user has been disingenuous in an attempt to



Date Flown:
12/31/02



200 0 200 400 Feet

Prepared by the Town of Davie GIS Division



VARIANCE **V 5-1-04** **Zoning and Aerial Map**

Prepared By: ID
Date Prepared: 6/23/04



V 5-1-04

Future Land Use Map

Prepared By: ID
Date Prepared: 6/23/04



Prepared by the Town of Davie GIS Division

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